



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

January 13, 2016

BY ECF

Honorable Paul G. Gardephe
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 1/18/17
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Re: **United States v. Kaleil Isaza Tuzman et al.,**
S8 15 Cr. 536 (PGG)

Dear Judge Gardephe:

The Government respectfully submits this letter jointly with counsel for defendants to update the Court on the status of privilege issues relating to the production of documents by Stephen Maiden ("Maiden"). Maiden's counsel has completed their review of the documents that were only on the SEC Images (*i.e.*, that were not also provided to the FBI in 2013) and that contain one or more of the search terms from the Forensic Imaging and Analysis Agreement. Maiden's counsel has produced a privilege log containing approximately 422 entries. The parties have begun conferring with Maiden's counsel regarding these privilege assertions. At present, Defendant Isaza Tuzman's position is that Maiden cannot assert privilege over these documents because Maiden's August 2013 production of computers to the FBI without any privilege reservations or any segregation of documents for privilege constitutes a subject matter waiver. In response, Maiden's counsel indicated that Maiden is at present continuing to assert privilege over the 422 documents on the log. The parties are continuing their discussions regarding Maiden's privilege invocations and whether further litigation on this issue will be necessary.

In addition, during this week's meet-and-confer over Maiden's privilege assertions, the government alerted the defendants to the SEC's recent disclosure to the government that some substantial number of the 100,000 Maiden documents the SEC segregated in 2014 as potentially privileged did not in fact hit on any of the search terms provided by Maiden's counsel, but were nonetheless segregated due to a technical error. Those documents that did not hit on the search terms but were incorrectly segregated and withheld in the SEC production are not subject to a claim of privilege; as a result, the government intends to produce those documents in this action. We are awaiting further information from the SEC regarding the extent of the technical error and incorrect segregation.

The parties respectfully propose to update the Court in two weeks, on January 27, 2017.

SO ORDERED:


Paul G. Gardephe, U.S.D.J.

Jan 17, 2017

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Respectfully submitted,

PREET BHARARA
United States Attorney

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